

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DR. MARK A. BARRY,
Plaintiff,

v.

DEPUY SYNTHES PRODUCTS, INC.,
ET AL.,
Defendants.

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Civ. No. 17-3003

AMENDED SCHEDULING ORDER

AND NOW, this 19th day of November, 2020, it is **ORDERED** as follows:

1. A trial for the above-captioned case shall be held on **April 13, 2021, at 9:30 a.m.** in Courtroom 14A, United States District Court, 601 Market Street, Philadelphia, PA 19106;
2. A final pretrial conference is scheduled for **April 7, 2021, at 10:00 a.m.** in Room 14614, United States District Court, 601 Market Street, Philadelphia, PA 19106. Lead Trial Counsel must attend. It is the responsibility of any trial counsel who cannot attend to contact the Court as soon as any conflict becomes known so the Court may consider rescheduling the conference. Unless the Court has otherwise granted permission, whoever attends the final pretrial conference will try the case. In addition to each trial counsel, each Plaintiff and Defendant or, in the case of a corporate Party, a representative with full authority to settle the case shall attend. Telephone availability is not acceptable unless leave of Court has been granted. Failure to comply with this order may result in sanctions in accordance with the Federal Rules of Civil Procedure.

As outlined below, all motions *in limine*, evidentiary motions, stipulations of facts, all depositions that will be introduced as testimony, and any and all other legal disputes that the Parties are aware of shall be due before the final pretrial conference so that they may be resolved before trial begins;

3. The Parties shall propound all interrogatories and requests for document production no later than **December 10, 2020**. The Parties shall respond to all written discovery requests no later than **December 28, 2020**. THESE RESPONSES SHALL INCLUDE ALL INITIAL DISCLOSURES CONTEMPLATED BY RULE 26(a)(1). All discovery shall proceed and continue in such manner as will assure that all requests for, and responses to,

discovery will be noticed, served, and completed no later than **January 13, 2021**;

4. The Parties should conduct discovery remotely (e.g. take depositions by videoconference or telephone) pending further Order of the court;
5. This matter is referred to United States Magistrate Judge Timothy R. Rice for a settlement conference on or about **January 20, 2021**. PLAINTIFF'S COUNSEL SHALL CONTACT DEFENDANT'S COUNSEL, AND THEN THE PARTIES SHALL JOINTLY CONTACT JUDGE RICE'S CHAMBERS TO ARRANGE THIS CONFERENCE. If the Parties believe that a settlement conference would be helpful at an earlier time, they are directed to contact Judge Rice to schedule the same. Judge Rice will require that lead counsel and Parties with full settlement authority attend the conference;
6. Any summary judgment motion or other dispositive motion, together with supporting brief, shall be filed **no later than January 27, 2021**. Responses shall be filed **no later than February 10, 2021**;
7. Plaintiff shall propose stipulated facts and submit those proposed stipulated facts to Defendant **no later than March 12, 2021**. Defendant shall state agreement or disagreement with each of Plaintiff's proposed stipulated facts and may counter-propose stipulated facts **no later than March 16, 2021**. Plaintiff is obligated to respond **no later than March 19, 2021**;
8. In accordance with Fed. R. Civ. P. 26(a)(3), listed exhibits shall be numbered and pre-marked for use at trial; no exhibit shall be listed unless it is already in the possession of opposing counsel. Only specifically listed exhibits may be used in the Party's case-in-chief except by leave of Court;
9. Counsel for each Party shall serve upon counsel for the other Party **no later than March 19, 2021**:
 - a. a copy of each exhibit they expect to offer at trial in furtherance of their respective contentions. Each exhibit shall be marked as it will be marked for trial;
 - b. curriculum vitae for each expert witness expected to testify; and

- c. a specific identification of each discovery item expected to be offered into evidence;
10. Counsel shall also provide the Court with one copy of all of these items in a tabbed, three-ring binder, complete with table of contents, **no later than March 19, 2021**;
11. As to documents listed in accordance with Fed. R. Evid. 803(6), as amended, notice in accordance with Fed. R. Evid. 902 (11) or (12) must be given **no later than March 19, 2021**;
12. All witnesses as to liability and damages should be listed. Only listed witnesses may testify at trial except by leave of Court. Any Party who intends to use deposition testimony at trial must submit deposition designations by **March 12, 2021**. Counter-designations shall be submitted by **March 16, 2021**. Objections to the designations shall be submitted **no later than March 19, 2021**;
13. Any other pretrial or trial matter requiring attention of the judge prior to trial, shall be specifically addressed in the final pretrial conference;
14. All Parties shall prepare and file with the Clerk of the Court their pretrial memoranda by **March 26, 2021**;
15. All motions *in limine* shall be filed **no later than March 26, 2021**. Responses thereto are due **no later than April 2, 2021**;
16. **No later than March 26, 2021**, after meeting and conferring, the Parties shall jointly submit proposed jury *voir dire* questions, jury interrogatories, verdict sheets, and proposed jury instructions a tabbed, three-ring binder, complete with table of contents. The Parties shall individually submit any proposed questions, interrogatories, sheets, or instructions upon which the Parties after conferring cannot agree. All questions, interrogatories, sheets, and instructions shall be submitted in hard copy and on a flash drive to the Court;
17. **No later than April 2, 2021**, the Parties shall jointly submit to the Court a tabbed, three-ring binder, complete with table of contents, containing each of the following:

- a. Answer;
 - b. Complaint;
 - c. Plaintiff's Pretrial Memorandum;
 - d. Defendants' Pretrial Memorandum;
 - e. Stipulated Facts;
 - f. Jointly Proposed Jury *Voir Dire* Questions (and any not agreed upon);
 - g. Jointly Proposed Jury Interrogatories (and any not agreed upon);
 - h. Jointly Proposed Jury Instructions (and any not agreed upon); and
 - i. Jointly Proposed Verdict Sheet; and
18. The Parties shall also provide the Court with an electronic copy of the above documents in Word format.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.